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CASE & COMMENT

MONTHLY

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THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY

Very truly yours
E. Henry Lacombe

PORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 5 FEBRUARY, 1899. NO. 9

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,

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E. H. Lacombe.

Emile Henry Lacombe, United States circuit judge, second circuit, was born in the city of New York in 1846. As his name indicates, he is of French descent, his grandfather being a refugee from San Domingo, who settled in Philadelphia, and whose son, the judge's father, was one of the old merchants of New York. Judge Lacombe was educated at Columbia College Grammar School and at Columbia College, and was graduated in the class of 1863 with honors, fourth in his class. He subsequently took the two years' course at Columbia College Law School, in which the late Professor Dwight was then the instructor, and was graduated in 1865, taking a prize for an essay on constitutional law. Since he was only nineteen at this time, he could not be admitted to practice until 1867. Thereafter, with the exception of a brief experience as adjuster of marine averages, he continued in private practice until, in 1875, he entered the law department of the city of New York, when it was reorganized under William C. Whitney. His work there was arduous, and constant promotion testified to its efficiency. The contracts made during the rule of the Tweed ring were then coming due, and the financial officer of the city practically refused payment on all of them. For two or three years not a court day passed without the trial of several city suits. Judge Lacombe had his share of the work. Some of the most important actions, involving complicated tabulations of figures, analyses of items of charge, and the collocation of seemingly unrelated facts, all tending to show fraud, were prepared for trial by him; and in the trial of many other causes he participated as assistant or as trial counsel.

In 1877 the city began largely to increase its holdings of the sources of water supply, and in the extensive litigation which ensued and the proceedings for condemnation Judge Lacombe had a prominent part. He drew the new aqueduct act of 1883, which has served as a model for subsequent legislation in the same field.

In May, 1884, he was appointed counsel to the corporation for the unfinished term of Judge George P. Andrews, and reappointed for a full term in January, 1885. He did not serve out his term, being appointed a United States circuit judge by President Cleveland in June, 1887. His first two years on the bench were mainly spent in clearing the court calendars of the large accumulation of untried actions for return of customs duties, in some of which the date of issue preceded the war. Experience in the despatch of business gained during his ten years' service in the law department enabled the new judge rapidly to reduce the trial list within reasonable limits. Since then he has been busily engaged, as are all the judges of that circuit, in the discharge of the usual judicial duties, and since 1891 he has sat as a judge of the United States circuit court of appeals for the second circuit. Judge Lacombe's judicial ability was rapidly recognized by the bar and the country at large. His eminence among Federal judges is quite out of proportion to the length of his service. In 1894 his old college conferred on him the degree of LL. D.

Voluntary or Compulsory Respect for Law.

A Texas correspondent agrees with "Case and Comment" that the widespread disrespect of law in this country is deplorable. But he thinks the patriotism of our people so great that they will obey "every just and reasonable demand from constituted authority." His remedy for the serious evil of disregarded laws is to get rid of foolish legislation. He says: "Make wholesome laws and we have an appreciative populace ready and willing to give glad obedience." All that he says about the American people may be true of the typical American. But who is ready to say that we have no criminal class in this country? The law against murder is surely a "wholesome" one, yet, notwithstanding the obedience gladly given to it by the great body of our citizens, the criminal classes make for the United States an annual record of homicides that horrifies the world. To remedy this fearful condition something more than the enactment of good laws is necessary. Those who will not give "glad obedience" must be taught to fear the penalty. Laws enforced will be respected. Those not enforced breed lawlessness. To cure the demoralizing disrespect of law we need, not spasmodic or sporadic crusades to enforce some special statute, but a clear, consistent, common-sense demand by the whole people that every law shall be either enforced or repealed. Honor, justice, and self-respect demand that we free the law of all farces, pretense, and hypocrisy—that the law shall say only what it means, and do what it promises to do.

The Motive of the War.

Professor William G. Sumner writes in the January number of the "Yale Law Journal" on the "Conquest of the United States by Spain." This title fairly indicates the attitude of the writer. In his opinion this nation has been wrong in the whole matter, and now, by taking the Philippines, has entirely abandoned its principles and Constitution. On questions involving such a vast range of interests a wide difference of opinion, even among the ablest men, was inevitable. It was not strange that on the final vote in the Senate for the ratification of the treaty of peace senators from the same state and belonging to the same party found themselves opposing each other. The champions of either side had opponents worthy of all respect for their ability and patriotism. Those to whom Professor Sumner is opposed were very largely in the majority, and among them are men whose great ability and high character will be freely conceded by all who are fair-minded and intelligent. It is, therefore, an unpleasant surprise to find him discussing these great national questions of extraordinary perplexity as if those who differ from himself were either imbecile or corrupt. His article is liberally sprinkled with such phrases as "national vanity," "national cupidity," "financial or political jobbery," "corruption of imperialism," "curbstone statesman," "unregenerate man," "grandiloquent speeches," and "sentimental drivel." He is so sure that our statesmen who bore the tremendous responsibilities of the war with Spain could have had no thoughts above partisan trickery that he explicitly declares that "the original and prime cause of the war was that it was a move of partisan tactics in the strife of parties at Washington."

This is a gratuitous imputation of an infamous motive to statesmen of the highest character. It is a raw assertion unsupported by evidence and contradicted by common knowledge. Those who remember how the sympathy of our people for suffering Cuba had increased and intensified from year to year, until at last from East and West, North and South, Republicans and Democrats, boards of trade, and even from conventions of clergymen and organizations of women, there came an irresistible demand that in some way the long agony of Cuba should be ended, well know that this was "the original and prime cause of the war," and that any political move could have been at most only an attempt to take advantage of a movement which could not be restrained. Those who respect chivalrous impulses cannot believe that men like Theodore Roosevelt and General Wheeler, who left high places in the government to face death before Spanish guns, had in mind nothing higher than "a move of partisan tactics in the strife of parties at Washington." A belief that the great majority of American statesmen and of American citizens are dominated by a dishonorable and contemptible purpose must flourish chiefly among those who are saturated with suspicion of their fellowmen, those who are superciliously lonely in their own virtue, and those who possess that peculiar astuteness which can detect hypocrisy in all uprightness and a mean motive behind every human action.

Constitutionality of the Bankruptcy Act.

If the new bankruptcy law, for which the business of the country has waited long, with hope deferred, should prove to be unconstitutional, the disappointment would be great. Doubt of its constitutionality is suggested by the "Harvard Law Review," Vol. 12, p. 272, by saying that the exemption of wage earners and farmers from the provision for involuntary bankruptcy seems on its face "to create special privileges in special classes, the unconstitutionality of which may invalidate the entire law." But it adds: "Doubtless the Supreme Court of the United States will not overthrow the act lightly, and may find a reason for the exemption of wage earners and farmers other than a desire to give them special privileges as such." The provision of the Federal Constitution which this law can be said to violate if it does give a special privilege is not pointed out. In fact, there seems to be no provision of that Constitution which is applicable to the case. The grant of power is, indeed, to establish "uniform laws on the subject of bankruptcies throughout the United States." But the word "uniform" was probably intended to mean merely that the laws should be the same in all the states, and not that they must make exactly the same provisions for all persons. It was so construed in *Re* Silverman, 2 Abb. U. S. 243, where it is said: "Congress is given full power over the subject, with the one qualification, that its laws shall be uniform throughout the United States. Whether these laws shall apply to all fraudulent or insolvent debtors, or only to such as are engaged in trade, is committed by the Constitution to the wisdom and discretion of the law-making power."

Certainly the word "uniform" has never been construed to prevent discrimination between classes of persons, although prior bankruptcy laws have made some discriminations by provisions which were not universally applicable. Aside from the effect of this word "uniform" the only constitutional provisions that readily suggest themselves as having any bearing on the subject are those respecting equality of privileges, immunities, and protection. But none of these provisions have any application to acts of Congress. The 14th Amendment, by its express terms, refers only to state laws, and the provision of art. 4, § 2, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states," although it is not in terms limited to state laws, is in effect so limited, as it is said in United States *v.* Harris, 106 U. S. 629, 27 L. ed. 295: "This section, like the 14th Amendment, is directed against state action. Its object is to place the citizens of each state upon the same footing with citizens of other states and inhibit discriminative legislation against them by other states." It is certain, therefore, that the constitutional guaranties of equal privileges, immunities, and protection have no application whatever to the subject. It is almost as certain that the word "uniform" in the constitutional grant of power has no reference to discrimination between classes of persons, but refers only to uniformity throughout the country. No other provisions of the Constitution seem to furnish any suggestion of a limitation on the power of Congress in this respect.

Public Policy and Incontestable Insurance.

The feature of incontestability in modern life insurance policies, by which life insurance business has been greatly stimulated, has given rise to some interesting questions which are not fully settled yet. That the stipulation which makes such policies incontestable after a certain period is not against public policy, is decided in Clement *v.* New York Life Ins. Co. (Tenn.) 42 L. R. A. 247, and Massachusetts Ben. L. Asso. *v.* Robinson (Ga.) 42 L. R. A. 261, but the question whether public policy will sustain the incontestable clause against all possible defenses is not entirely settled. The cases on the subject, which are collected in a note to those above referred to, agree substantially in holding that defenses of concealment, misstatements, and fraud, as well as the defense of suicide, are cut off by the incontestable clause. But there is a conflict of the decisions as to the effect of this clause on the defense that the plaintiff has no insurable interest in the life of the person insured. In Wright *v.* Mutual Ben. Life Asso. 118 N. Y. 237, 6 L. R. A. 731, this defense also was held to be precluded by the incontestable clause. The defense of a fraudulent scheme to cheat the insurance company was most discussed, but it was explicitly held also that the insurer could not prove the lack of insurable interest of the beneficiary. The court held that the incontestable clause was in the nature of a statute of limitations, which required the insurance company to discover the defense within the period named or else be barred

from setting it up. On the other hand, there are two cases in which the lack of insurable interest has been set up to defeat the policy notwithstanding an incontestable clause. These are the Clement case, above named, and the case of Manufacturers' L. Ins. Co. v. Anctil, 28 Can. S. C. 103. In the Clement case the plaintiffs were transferees of the policy, and the court held that, while the incontestable clause applied to the original validity of the policy, it did not apply to any subsequent disposition of it, and that as to transferees who took the policy for a speculative purpose public morals and the public good required the defense to be sustained notwithstanding the stipulation that the policy should be incontestable. But in the Canada case, where the question was between the original beneficiary of the policy, who took it as a speculation, and the insurer, the court went the whole length of excluding wager policies entirely from the operation of the incontestable clause, on grounds of public policy, saying: "Private interests must give way before public interests. The stipulation itself is contrary to law and public order."

However stringent the incontestable clause of a policy may be made, it is, of course, like every other contract, subject to rules of public policy. Fraud and suicide, as well as wager policies, are against public policy. Is there any reason why the incontestable clause should not apply to all of these alike? There is one distinction which is material. That is in the danger of allowing one person to profit from the death of another in whose life he has no interest. When a person is insured for the benefit of near relatives or of creditors there is a presumption that the insurable interest of the beneficiaries is great enough to prevent danger of criminal acts to get the insurance. But that danger cannot be ignored when the beneficiaries have no insurable interest in the insured life. It is a serious question whether the Canada court is not entirely right in excluding wager policies entirely from the benefit of the incontestable clause.

The Law as to Political Committees.

The increasing recognition of political parties and their conventions and committees in legislation to regulate the nomination of candidates for office has given rise to legal questions that are somewhat new in the courts. The power of the committee of a political party to make nominations by virtue of authority delegated to it by a political convention is upheld in White v. Sanderson (Minn.) 42 L. R. A. 231. The attempt of a political committee which called a convention to decide between contesting delegations and leave the convention itself no power in that matter was held ineffectual in Stephenson v. Boards of Election Comrs. (Mich.) 42 L. R. A. 214. The court said: "While it has doubtless been the common practice for chairmen of political committees to use the gavel to procure order and silence, to read the call, and then to ask the assembly its further will or pleasure, and put motions until a temporary chairman is chosen, we have not understood it to be the province of the chairman to do more, or so much even, if against the will of the assembly. Certainly we know of no rule of law authorizing it. The assembly is a law unto itself, and has uniformly been the judge of the qualifications of its own members, and its decision final." The same principle is more broadly stated in Hutchinson v. Brown (Cal.) 42 L. R. A. 232, by saying that the committee "has no right to forestall, or in any manner limit or curtail, the powers of the convention which it calls." Therefore it is held to be of no consequence what resolutions the executive committee chose to couple with its call for a party convention, as they were merely advisory, and, as advice, were worth just what the convention chose to rate them at. But the membership of a political committee is held, in Kearns v. Howley (Pa.) 42 L. R. A. 235, to be beyond the control or supervision of the court, as the committee is purely political and has no rights of property. Therefore the court refused to grant an injunction against adding names to the committee or striking names from it.

The result of the authorities and the reason of the matter agree in the conclusion that the courts may not interfere with the organization or membership of a purely political committee, but may consider the validity and effect of its acts as soon as those acts affect the validity of a nomination for office respecting which the court is required to decide.

Pendency of Suits in Both Federal and State Courts Within the Same State.

The question whether the courts of a state and of the United States sitting in the same district and having concurrent jurisdiction of the matters in controversy are courts of foreign

jurisdiction to each other, in respect to pleading in one of them the pendency of a prior action in the other, has been discussed in many cases, and the conclusions of the courts are in much conflict.

In the recent case of Willson v. Milliken (Ky.) 42 L. R. A. 449, the majority of the court held that such courts are not foreign to each other, and therefore that the pendency of an action in a Federal court after removal from a state court will abate an action subsequently brought in the state court, although it was held that the dismissal or discontinuance of the former suit, even after the plea in abatement was filed, would remove the objection, unless the later suit was brought for the purpose of vexation. But the doctrine that the courts are not foreign to each other, and that the pendency of an action in one will abate an action in the other, is vigorously contested by a dissenting opinion in the case. A note to this case collects the numerous authorities on the subject, and shows that they are far from harmonious. By far the larger number of the decisions support the doctrine of the dissenting judge, that actions may be brought in both courts at the same time, although in comparatively few of the cases was the question presented in its simplest form. In most of them some difference in the causes of action or in the parties was involved. Yet in a great number of cases there is either a decision or *dictum* in support of the theory that no plea of abatement will lie to any action in a state or Federal court because of the pendency of another suit in the other court. The United States Supreme Court declared this doctrine in Gordon v. Gilfoil, 99 U. S. 169, 25 L. ed. 383, but the majority opinion of the Kentucky court contends that the United States Supreme Court did not actually decide the question. A few cases in other Federal courts have vigorously contested that doctrine. The tendency of both state and Federal courts in recent years is doubtless toward greater harmony and comity. The ghost of states' rights no longer gets between them. To hold that they are foreign to each other, even when sitting in the same district and administering the same law, seems to imply a misfit adjustment of national and state courts to each other. There is something anomalous in permitting a plaintiff to bring two actions at the same time, on the same cause of action, against the same defendant, within the same judicial district. But most of the decisions and *dicta* support the right. If Gordon v. Gilfoil actually decides the question, that, of course, is an end of the matter. But the causes of action there considered were not identical, and for this reason the court, if it chooses to do so, may feel at liberty to limit the doctrine there declared.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 42, Parts 2 and 3.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Aliens.

A per diem tax on employers for each foreign-born, unnaturalized person in their employ, which may be deducted from the wages of the employee, is held, in Juniata Limestone Co. v. Fagley (Pa.) 42 L. R. A. 442, to be in violation of U. S. Const. 14th Amend., and also of the uniform rule of taxation required by the Pennsylvania Constitution.

Arrest.

The right to shoot at a person who is merely running away from an officer to escape from arrest for a misdemeanor is denied in Brown v. Weaver (Miss.) 42 L. R. A. 423, and, if the officer does shoot wrongfully, it is held to be an official act covered by his bond.

Attachment.

An attachment of intoxicating liquors shipped into a state for an unlawful purpose is held, in Lanahan v. Bailey (S. C.) 42 L. R. A. 297, to be invalid under the South Carolina dispensary law, by which any sale of such liquors is unlawful.

Banks.

The novel question whether a bank holding certificates of deposit issued by another bank is a depositor is decided in State Savings Bank v. Foster (Mich.) 42 L. R. A. 404, holding that, when such certificate does not represent any actual deposit, but only a credit on the books, against which checks or drafts may be drawn, the holder is not a depositor in the other bank within the meaning of a statute creating an individual liability of stockholders to the depositors.

Boycott.

To picket the premises of a person boycotted, in order to intercept his teamsters or to prevent persons going there to trade, is held unlawful in Beck v. Railway Teamsters' Protective Union (Mich.) 42 L. R. A. 407, on the ground that it is an act of intimidation and an unreasonable interference with the right of free trade.

Building and Loan Associations.

The inability of a building and loan association to comply with its contract is held, in Southern Building & Loan Asso. v. Price (Md.) 42 L. R. A. 206, to abrogate a condition of the payment of withdrawals, which required certain collections to be first made; and therefore an action in another state by one who had given proper notice of withdrawal was sustained without compliance with such condition.

Carriers.

Starting a train without waiting for a passenger to reach a seat after entering the vehicle is held, in Louisville & N. R. Co. v. Hale (Ky.) 42 L. R. A. 293, to give no cause of action to a passenger who is injured thereby, unless there was some other reason for waiting than the fact that the passenger was a fleshy woman encumbered with a number of children,—at least when she had an escort with her.

Conflict of Laws.

The courts have been in conflict as to the right to bring action in another state to enforce the liability of a stockholder in a Kan-

sas corporation, but the authorities which support the right are reinforced by the recent decision in Hancock Nat. Bank v. Ellis (Mass.) 42 L. R. A. 396, holding that the right of action to enforce the liability created by the Kansas statute is transitory.

Constitutional Law.

See also ALIENS.

The claim of the infringement of a constitutional right to sell intoxicating liquors by a dispensary law is rejected in Plumb v. Christie (Ga.) 42 L. R. A. 181, where the dispensary act is applicable to a particular county.

Contracts.

A statute modifying the remedy by attachment, so that an attachment will be dissolved by a general assignment of the defendant for creditors within ten days thereafter, is held, in Peninsular Lead & C. Works v. Union Oil & P. Co. (Wis.) 42 L. R. A. 331, to be unconstitutional as applied to contracts made when the right of attachment was absolute or was not subject to this contingency.

Employment to procure the passage of ordinances for paving streets and alleys at a compensation which is in part contingent upon success in obtaining the necessary ordinances and securing the contracts is held, in Crichfield v. Bermudez Asphalt Paving Co. (Ill.) 42 L. R. A. 347, to be void on grounds of public policy because tending to bribery and corruption.

A promissory note payable six months after date if the promisor was elected to a certain office is held, in Specht v. Beindorff (Neb.) 42 L. R. A. 429, to be lacking in the certainty necessary for a negotiable instrument, and also void on grounds of public policy as a wager on the result of the election.

Costs.

An order staying all further proceedings in an action until the costs of an appeal are paid is held, in Knee v. Baltimore City Pass. R. Co. (Md.) 42 L. R. A. 363, to be consistent with the constitutional guaranties of right to trial by jury and to have justice freely, without sale.

Criminal Law.

The power of a judge to suspend the execution of a sentence imposed in a criminal case is denied in Neal v. State (Ga.) 42 L. R. A. 190, and the words suspending the sentence are held surplusage.

The loss of a reward for making an arrest, caused by false representations, under which another person got a telephone communication and himself caused the arrest and obtained the reward, is held, in Smitha v. Gentry (Ky.) 42 L. R. A. 302, to give no right of action against him, because the damages are too remote and contingent.

Evidence.

Evidence of the trailing of an alleged criminal with a bloodhound is held, in Pedigo v. Com. (Ky.) 42 L. R. A. 432, to be inadmissible unless it is proved that the dog by which it was done possessed the power of discrimination and acuteness of scent sufficient for the purpose, and it is insufficient to show that the dog belonged to a breed which possessed those qualities.

Exhibitions.

A proprietor of a public resort who employs an independent contractor to make a balloon ascension to attract visitors is held, in Smith v. Benick (Md.) 42 L. R. A. 277, not to be liable for an injury to a visitor by a pole which fell because of the negligence of the balloonist while he was endeavoring to raise the pole for use in inflating the balloon.

Fraud.

Misrepresentation by a proposed buyer to a commercial agency, respecting his financial condition, is held, in Poska v. Stearns (Neb.) 42 L. R. A. 427, insufficient ground for rescinding a sale made by one who relied on a report of the commercial agency, where that report included other matters beside the statement of the buyer.

Fright.

The authorities which deny a right of action for mere fright or nervous shock are reinforced by Braun v. Craven (Ill.) 42 L. R. A. 199, which was a case of fright resulting in St. Vitus' dance, caused by violent conduct of a landlord suddenly appearing at the door of a room in which a woman was packing goods for moving.

Garnishment.

Garnishment of insurance money due from a foreign corporation to a nonresident of the state, for a loss occurring in another state, is held, in Swedish American Nat. Bank v. Bleecker (Minn.) 42 L. R. A. 283, to be invalid for lack of jurisdiction, as the debt has no situs in the state.

Grand Jury.

The presence of a stenographer for the state's attorney in the grand-jury room during the taking of the testimony of witnesses, and the taking and transcribing of such testimony in full, is held, in State v. Brewster (Vt.) 42 L. R. A. 444, insufficient to abate the indictment, in the absence of any statutory provision or any prejudice to the accused.

Highways.

An ordinance requiring abutting owners to keep sidewalks free from snow, as they are required to do almost everywhere, is held, in State v. Jackman (N. H.) 42 L. R. A. 438, to be unconstitutional as a taking of property for public use without just compensation. This is in conflict with the conclusions of the courts elsewhere.

Husband and Wife.

Marriage on the high seas, where there is no law regulating the matter, entered into by persons who went there with the avowed purpose of evading the laws of their residence, is held, in Norman v. Norman (Cal.) 42 L. R. A. 343, to be invalid.

Injunction.

The right of a wife to an injunction against her husband's entering her dwelling house and eating and sleeping there is granted in Lyon v. Lyon (Ga.) 42 L. R. A. 194, in a case in which she had a pending suit for divorce from him on the ground of cruelty and habitual intoxication.

Insurance.

Death resulting from hernia, which was caused by accident, is held, in Atlanta Accident Association v. Alexander (Ga.) 42 L.R.A. 188, to give a right of action on a policy against accidents, although there was a provision against liability for injuries or death resulting from hernia or other disease.

A contract by an insurance agent to keep a person's property insured in his company is held, in Ramspeck v. Patillo (Ga.) 42 L. R. A. 197, to be invalid unless the company consents, because the agent cannot act in a double capacity, and this contract would require him to perform inconsistent duties and require the consent of both parties.

A provision that a life insurance policy shall be incontestable after one year is held, in Clement v. New York Life Ins. Co. (Tenn.) 42 L. R. A. 247, to be neither unreasonable nor contrary to public policy, but, while it is held applicable to fraud in procuring the policy, it is held inapplicable to the defense that the plaintiffs had procured the issue of the policy and its transfer to them as a speculation, and was therefore a gambling or wagering contract. With this case is an extensive note on incontestable life policies.

A policy omitting the usual suicide clause, and containing an "absolutely incontestable" clause, is held, in Patterson v. Natural Premium Mut. L. Ins. Co. (Wis.) 42 L. R. A. 253, to cover a case of death by suicide.

A stipulation that a life policy is incontestable after three years from date and the payment of three full yearly premiums is held, in Massachusetts Ben. L. Asso. v. Robinson (Ga.) 42 L. R. A. 261, to be valid and applicable to a defense based upon misrepresentations or warranties, whether fraudulent or otherwise.

A claim for death loss occurring after an assignment for creditors by an assessment life insurance company which had no capital stock and no accumulation of funds for losses, except such as it secured by assessments for losses, is held, in *Re* Wisconsin Odd Fellows' Mut. L. Ins. Co. (Wis.) 42 L. R. A. 300, not to be a debt which can be enforced against the estate in the hands of the assignee.

Judgment.

After-acquired lands are held, in Moore v. Jordan (N. C.) 42 L. R. A. 209, to be subject to the lien of previously docketed judgments, not according to the dates when they were docketed, but by *pro rata* application of the proceeds.

A suit for divorce brought by the husband, whose property is all within the jurisdiction of the court, although his wife fails to appear

or answer on personal service in another state, is held, in Sprague *v.* Sprague (Minn.) 42 L. R. A. 419, to give the court jurisdiction to decree alimony, although the wife is not personally served within the state.

Liens.

Contractors who do not personally labor or work upon a railroad are held, in Little Rock, H. S & T. R. Ry. *v.* Spencer (Ark.) 42 L. R. A. 334, to have no right to a lien under a statute giving liens to mechanics, builders, artisans, workmen, laborers, or other persons who perform work or labor upon or furnish materials for a railroad.

Municipal Corporations.

A municipal corporation enforcing a valid ordinance for vaccination is held, in Wyatt *v.* Rome (Ga.) 42 L. R. A. 180, to be exercising a governmental function, and therefore not liable for any damages caused by impure vaccine matter.

An ordinance forbidding the business of collecting, storing, and dealing in rags within thickly settled portions of a city is held, in Com. *v.* Hubley (Mass.) 42 L. R. A. 403, to be not unreasonable or in excess of the police power of the city.

Negligence.

Failure to fence or otherwise guard an open excavation or pond is held, in Stendal *v.* Boyd (Minn.) 42 L. R. A. 288, to give no right of action against the landowner for injury to children coming thereon without right or invitation, although they are attracted by the excavation or pond.

Sale.

A consignment of property to one's own order, with directions to notify the purchaser thereof, and the sending of a draft with bill of lading attached, requiring payment thereof before the bill of lading shall be delivered, are held, in Kentucky Refining Co. *v.* Globe Refining Co. (Ky.) 42 L. R. A. 353, not to transfer the title to the property before the draft is actually paid and the bill of lading delivered, although the draft has been accepted.

Taxes.

A theosophical corporation is held, in New England Theosophical Corp. *v.* Boston (Mass.) 42 L. R. A. 281, to be neither a scientific, benevolent, nor charitable institution, within the meaning of a statute respecting taxation.

Patent rights granted by the United States for an invention are held, in People, *ex rel.* Edison Elec. Illum. Co., *v.* Board of Assessors (N. Y.) 42 L. R. A. 290, to be exempt from the taxing power of a state.

Trusts.

A trust created by a conveyance and reconveyance to the grantor of real estate for his own life, with power to receive rents and profits for his own benefit, and sell and otherwise dispose of the property without accounting for the proceeds, with remainder after his life estate to his daughters in case the property is not disposed of by him, is held, in Scott *v.* Keane (Md.) 42 L. R. A. 359, to be void in favor of his subsequent creditors.

Vaccination.

The first decision rendered by any court of last resort of the United States in full support of the police power to compel the vaccination of citizens is that of Morris *v.* Columbus (Ga.) 42 L. R. A. 175, which sustains the power to require all persons within the limits of the municipal corporation to submit to vaccination whenever an epidemic of smallpox is existing or may be reasonably apprehended.

View.

A view by the jury of the premises where a crime was committed is held, in People *v.* Thorn (N. Y.) 42 L. R. A. 368, to constitute no part of the trial, nor a taking of evidence; and therefore it is held lawful to permit the jury to make such view in the absence of the accused,—at least when he waives his right to be present. With this case is a very extensive note marshalling the authorities on the subject of view by jury, and showing that there are several different theories entertained by the courts.

Voters and Elections.

The power of the chairman of a political committee calling a convention to determine

the right of contesting delegations to vote in organizing the convention is denied in Stephenson v. Boards of Election Comrs. (Mich.) 42 L. R. A. 214, although he is acting under the direction of a majority of the committee.

A majority vote in favor of one of the candidates before a convention is held, in Phillips v. Gallagher (Minn.) 42 L. R. A. 222, to be subject to reconsideration by the convention, which may declare the ballot irregular and proceed to name another candidate in such manner as the majority may direct.

The right of a political convention to delegate its power to a committee for the nomination of candidates is sustained in White v. Sanderson (Minn.) 42 L. R. A. 231, and the certificates of nominations are held properly executed by the chairman and secretary of the committee.

The attempt of an executive committee to forestall the action of a party convention which it calls is held, in Hutchinson v. Brown (Cal.) 42 L. R. A. 232, to be ineffectual, and the violation of their pledges or the sacrifice of party interests by members of the convention in making a nomination or adopting a plan of fusion is held insufficient ground for refusing to file a certificate of nomination.

An injunction against adding names to a political committee or striking names therefrom is refused in Kearns v. Howley (Pa.) 42 L. R. A. 235, on the ground that the committee has no property rights. The fact that the law recognizes political parties and committees chosen at primary elections is not deemed sufficient to give the court any control over the acts of the committee.

A limitation of the right to a place on an official ballot to parties each of which cast at least 1 per cent of the entire vote at the preceding general election is held constitutional in State, *ex rel.* Plimmer, v. Poston (Ohio) 42 L. R. A. 237.

A similar statute requiring a party to have cast at least 2 per cent of the vote at the preceding election is sustained in State, *ex rel.* Runge, v. Anderson (Wis.) 42 L. R. A. 239. In this case the statute also refused to give a person nominated by two parties more than one place on the ballot, and this provision is upheld against the contention that it prevents a party from nominating the same persons that have been nominated by another party without losing its right of representation on the official ballot at the next election.

A statute providing that the number of votes polled at the last general election by a political party shall be found by taking the average vote received by such candidates as were not indorsed by any other party is held, in Higgins v. Berg (Minn.) 42 L. R. A. 245, to be inapplicable where two parties separately nominated a duplicate ticket with all the candidates alike. In such case it is held that for the purpose of preparing the official ballot this computation may be made by any reasonable rule or method that is fair and practicable.

Waters.

A conveyance bound by a river is held, in Goff v. Cougle (Mich.) 42 L. R. A. 161, to give title to the middle of the main channel, so as to include islands lying between that and the shore, in the absence of anything to show that the islands belong to the government.

An unmeandered river of sufficient capacity to float logs, and down which logs are driven from time to time, is held, in Willow River Club v. Wade (Wis.) 42 L. R. A. 305, to be a public navigable stream.

Recent Articles in Law Journals and Reviews.

"Alteration of Negotiable Instruments."—4 Western Reserve Law Journal, 198.

"A Proposed New Definition of a Tort."—12 Harvard Law Review, 335.

"Massachusetts as a Philanthropic Robber."—12 Harvard Law Review, 316.

"Constitutional Aspects of Annexation."—12 Harvard Law Review, 291.

"Stockholder's Inspection of Corporate Books and Papers."—6 New York Annotated Cases, 58.

"Charging Third Party Defending with Costs."—6 New York Annotated Cases, 50.

"Opening Default."—6 New York Annotated Cases, 31.

"Summary Remedy of Client against Attorney."—6 New York Annotated Cases, 6.

"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."—7 American Lawyer, 12.

"Law and Lawyers."—7 American Lawyer, 9.

"Manslaughter, Christian Science, and the Law."—7 American Lawyer, 5.

"Perpetuities."—15 Law Quarterly Review, 71.

"The Hare System, with Special Reference to Its Application in Tasmania."—15 Law Quarterly Review, 51.

"Penal Servitude: Its Past and Its Future."—15 Law Quarterly Review, 33.

"Continuous Voyages in Relation to Contraband of War: The Affair of the Gaelic in the Chino-Japanese War."—15 Law Quarterly Review, 24.

"Should Land Transfer Registries be Worked by Solicitors, or by Government?"—15 Law Quarterly Review, 15.

"The Revision Powers of the Court of Cassation."—15 Law Quarterly Review, 9.

"Extra-territorial Criminal Legislation of Canada."—19 Canadian Law Times, 1.

"Possession; Actual and Constructive in Law and Equity."—48 Central Law Journal, 51.

New Books.

"A Treatise on Bankruptcy." By Frank O. Loveland. (W. H. Anderson & Co., Cincinnati, Ohio.) 1 Vol. $6.

"Bates' Ohio Statutes." New Edition. (W. H. Anderson & Co.) 3 Vols. $12.

"Guide for Township Officers." By Judge W. M. Rockel. (W. H. Anderson & Co.) 1 Vol. $4.

"Notaries Public, Guide." By John H. Simpson. Pocket Edition. (J. F. Gepfert, Cleveland, Ohio.) 1 Vol. $1.

"New York Annual Digest." By Willard S. Gibbons. (L. C. P. Co., Rochester, N. Y.) 1 Vol. $5.

"Real Property Law of New York." With Comments. By Robert Ludlow Fowler. (Baker, Voorhis & Co., New York.) 1 Vol. $6.

"Pollock & Maitland's History of English Law." New Edition. (Little, Brown & Co., Boston, Mass.) $9.

"Law of Mines in Canada." By Macpherson & Clark (The Carswell Co., Limited, Toronto, Ont.) 1 Vol. $20.

"Judicature Act of Ontario." With Rules of Practice and Procedure of the Supreme Court. With Notes. By Holmested & Langton. (The Carswell Co., Limited.) 1 Vol. $18. 2 Vols. $19.

"Analyses of the Law of Evidence, Equity, Contracts, and Code Pleadings." (W. H. Anderson & Co.) $1 each.

The Humorous Side.

HER JUDGMENT SUSTAINED.—In a divorce case where there was evidence that the wife called her husband "an old fool," the court says, "The record sustains the wife's judgment." And on another point also her conclusion was affirmed. She told him she would have been foolish to have married a man of his age who had no money, and the court says, "Again we think her judgment was correct."

A DISSECTING OPINION.—The types recently made a judge cite an authority as follows: "See dissecting opinion of Bramwell in Osborn *v.* Gillette, *supra*." He may have meant to say "dissenting" instead of "dissecting," but the typical dissenting opinion may be fairly called, not only a dissecting, but a scalping, a flaying, and a vivisecting operation which the dissenter performs on his brethren.

EXHAUSTING OPINIONS.—The opinion of a New York lower court, as printed in a certain report, says in respect to the conclusions of a referee, "The report is so exhausting that the court could not improve on it." This is modest, of course, but judges do not always realize how exhausting their opinions are.

COMPLIMENTS TO THE COURT.—To the list of fervent compliments paid to the court by defeated attorneys the following may be added:

"I think our supreme court is a good legislative body. What do you think?"

"The court rejected the correct view in order to follow the d——d sentimentalism of a one-horse text-writer."

"It is one of the misfortunes of practising before courts of final resort that an argument presented on the facts shown by the record becomes of no value by a statement of facts manufactured by the court."

"JUST AS BUBBLES DO."—In a contest over the right to build a flume, plaintiffs promised to make it secure, "and, like the deacon's shay, * * * make it strongest in the weakest point." But the court said, "It is not the plaintiffs' flume, though, that this court thinks should be made strongest in its weakest point, but the proceeding by which they can alone obtain the right to build the flume. However, as far as they have gone, their case is truly like the deacon's shay,—it has collapsed entirely, and, like the deacon, they are on the rock, for they are out of court."